

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-S-388-SB-2000(O&M)
Date of Decision :12.01.2015

Jasbir SinghAppellant

Versus

State of Punjab Respondent

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Karan Bhardwaj, Advocate
amicus curiae for the appellant.

Mr.APS Gill, AAG, Punjab.

- i. Whether Reporters of local papers may be allowed to see the judgment?
- ii. To be referred to the Reporters or not?
- iii. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

This appeal has been filed by Jasbir singh who has been convicted along with his co-accused Kulwinder Kumar for the commission of offence under Sections 366 and 376 IPC. The sentence awarded to him is as under:-

Sr.No.	Under Section	Sentence Awarded	In default
1.	366 IPC	Six years R.I. and fine of Rs. 2000	Six months R.I.
2.	376 IPC	Eight years R.I. and fine of Rs. 3000	Six months R.I.

Both the substantive sentences were ordered to run

concurrently.

FIR was lodged by Pakhar Singh that on the date in question i.e. 13.01.1999 his daughter had gone to the fields at about 7.00 p.m. When she did not return, he searched for her and, on the next day lodged the present FIR in which he expressed the apprehension that the petitioner along with other co-accused had kidnapped his daughter. The prosecutrix was recovered after about a month from the company of the co-accused. In her testimony she stated that on the fateful day when she had gone to the fields the appellant along with three other co-accused forcibly kidnapped her, took her to the tubewell of one Sohan Lal from where she was taken to poultry farm where all the four raped her. Thereafter on the next day she was taken by them to Hoshiarpur and then, for the next 20 days she was kept by one of the co-accused in Dhobi Ghat, Hoshiarpur. From there that co-accused took her to Mahilpur and on the next day to Jaitpur where they were both apprehended. Consequently the appellant and one of the co-accused were convicted as stated above while two persons against whom there were no allegations of rape, were acquitted.

The argument of learned amicus curiae is that there is no evidence against the appellant except for the statement of the prosecutrix and that statement, as per him, is full of loop holes. There is no explanation why the prosecutrix did not raise an alarm for 20 days when she was 'confined' by one accused nor when he took her to Mahilpur and nor when he took her to Jaitpur. From a reading of the testimony of the prosecutrix I find that the lame excuse she has given for not raising an alarm was that she was scared of the co-accused. Learned counsel has then drawn the attention of the Court to photographs Ex.D-1, D-2 and D-3 where the prosecutrix is shown dressed in all bridal finery along with the co-accused. With regard to

these photographs also the facile explanation given by the prosecutrix is that she was too scared of the co-accused to raise any objection. A perusal of the photographs does not give any indication that the prosecutrix was in mortal fear and rather seem to be the photographs of a couple in love. Learned AAG has sought to defend the order of the trial Court on the ground that the prosecutrix has categorically deposed against the appellant. The question is whether this statement inspires such confidence to prove beyond reasonable doubt that the appellant was party to rape. Having gone through the entire factual matrix and the material on record I have no hesitation in agreeing with learned amicus curiae that a reasonable doubt has been cast on the story of the prosecution. As the trial Court pointed out, the fear of the prosecutrix when she was escorted by four persons is understandable but this Court is not convinced that the prosecutrix had such fear from the co-accused that for a period of almost one month she would not raise an alarm even when he was alone with her and used to go away after locking her in one room. The photographs and the admission of the prosecutrix that she used to accept love letters from the co-accused, to my mind raise a reasonable doubt on the story of the prosecution.

In these circumstances I have to grant the benefit of doubt to the appellant and consequently allow the appeal, set aside his conviction and acquit him of the charges levelled against him.

(AJAY TEWARI)
JUDGE

January 12, 2015
sunita